

1 AN ACT concerning whistleblower protection.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Whistleblower Reward and Protection Act
5 is amended by changing sections 3, 4, and 8 as follows:

6 (740 ILCS 175/3) (from Ch. 127, par. 4103)

7 Sec. 3. False claims.

8 (a) Liability for certain acts. Any person who:

9 (1) knowingly presents, or causes to be presented,
10 to an officer or employee of the State or a member of the
11 Guard a false or fraudulent claim for payment or
12 approval;

13 (2) knowingly makes, uses, or causes to be made or
14 used, a false record or statement to get a false or
15 fraudulent claim paid or approved by the State;

16 (3) knowingly conspires to defraud the State by
17 getting a false or fraudulent claim allowed or paid;

18 (4) has possession, custody, or control of property
19 or money used, or to be used, by the State and, intending
20 to defraud the State or willfully to conceal the
21 property, delivers, or causes to be delivered, less
22 property than the amount for which the person receives a
23 certificate or receipt;

24 (5) authorized to make or deliver a document
25 certifying receipt of property used, or to be used, by
26 the State and, intending to defraud the State, makes or
27 delivers the receipt without completely knowing that the
28 information on the receipt is true;

29 (6) knowingly buys, or receives as a pledge of an
30 obligation or debt, public property from an officer or
31 employee of the State, or a member of the Guard, who

1 lawfully may not sell or pledge the property; or

2 (7) knowingly makes, uses, or causes to be made or
3 used, a false record or statement to conceal, avoid or
4 decrease an obligation to pay or transmit money or
5 property to the State,

6 is liable to the State for a civil penalty of not less than
7 \$5,000 and not more than \$10,000, plus 3 times the amount of
8 damages which the State sustains because of the act of that
9 person. A person violating this subsection (a) shall also be
10 liable to the State for the costs of a civil action brought
11 to recover any such penalty or damages.

12 (b) Knowing and knowingly defined. As used in this
13 Section, the terms "knowing" and "knowingly" mean that a
14 person, with respect to information:

15 (1) has actual knowledge of the information;

16 (2) acts in deliberate ignorance of the truth or
17 falsity of the information; or

18 (3) acts in reckless disregard of the truth or
19 falsity of the information, and no proof of specific
20 intent to defraud is required.

21 (c) Claim defined. As used in this Section, "claim"
22 includes any request or demand, whether under a contract or
23 otherwise, for money or property which is made to a
24 contractor, grantee, or other recipient if the State provides
25 any portion of the money or property which is requested or
26 demanded, or if the State will reimburse such contractor,
27 grantee, or other recipient for any portion of the money or
28 property which is requested or demanded.

29 (d) Exclusion. This Section does not apply to claims,
30 records, or statements made under the Illinois Income Tax
31 Act.

32 (Source: P.A. 87-662.)

33 (740 ILCS 175/4) (from Ch. 127, par. 4104)

1 Sec. 4. Civil actions for false claims.

2 (a) Responsibilities of the Attorney General and the
3 Department of State Police. The Department of State Police
4 shall diligently investigate a civil violation under Section
5 3, except for civil violations under Section 3 that relate to
6 and adversely affect primarily the system of State colleges
7 and universities, any school district, any public community
8 college district, any municipality, municipal corporations,
9 units of local government, or any combination of the above
10 under an intergovernmental agreement that includes provisions
11 for a governing board of the agency created by the agreement.
12 The Attorney General may bring a civil action under this
13 Section against any person that has violated or is violating
14 Section 3.

15 (b) Actions by private persons.

16 (1) A person may bring a civil action for a
17 violation of Section 3 for the person and for the State.
18 The action shall be brought in the name of the State.
19 The action may be dismissed only if the court and the
20 Attorney General give written consent to the dismissal
21 and their reasons for consenting.

22 (2) A copy of the complaint and written disclosure
23 of substantially all material evidence and information
24 the person possesses shall be served on the State. The
25 complaint shall be filed in camera, shall remain under
26 seal for at least 60 days, and shall not be served on the
27 defendant until the court so orders. The State may elect
28 to intervene and proceed with the action within 60 days
29 after it receives both the complaint and the material
30 evidence and information.

31 (3) The State may, for good cause shown, move the
32 court for extensions of the time during which the
33 complaint remains under seal under paragraph (2). Any
34 such motions may be supported by affidavits or other

1 submissions in camera. The defendant shall not be
2 required to respond to any complaint filed under this
3 Section until 20 days after the complaint is unsealed and
4 served upon the defendant.

5 (4) Before the expiration of the 60-day period or
6 any extensions obtained under paragraph (3), the State
7 shall:

8 (A) proceed with the action, in which case the
9 action shall be conducted by the State; or

10 (B) notify the court that it declines to take
11 over the action, in which case the person bringing
12 the action shall have the right to conduct the
13 action.

14 (5) When a person brings an action under this subsection
15 (b), no person other than the State may intervene or bring a
16 related action based on the facts underlying the pending
17 action.

18 (c) Rights of the parties to Qui Tam actions.

19 (1) If the State proceeds with the action, it shall
20 have the primary responsibility for prosecuting the
21 action, and shall not be bound by an act of the person
22 bringing the action. Such person shall have the right to
23 continue as a party to the action, subject to the
24 limitations set forth in paragraph (2).

25 (2) (A) The State may dismiss the action
26 notwithstanding the objections of the person
27 initiating the action if the person has been
28 notified by the State of the filing of the motion
29 and the court has provided the person with an
30 opportunity for a hearing on the motion.

31 (B) The State may settle the action with the
32 defendant notwithstanding the objections of the
33 person initiating the action if the court
34 determines, after a hearing, that the proposed

1 settlement is fair, adequate, and reasonable under
2 all the circumstances. Upon a showing of good
3 cause, such hearing may be held in camera.

4 (C) Upon a showing by the State that
5 unrestricted participation during the course of the
6 litigation by the person initiating the action would
7 interfere with or unduly delay the State's
8 prosecution of the case, or would be repetitious,
9 irrelevant, or for purposes of harassment, the court
10 may, in its discretion, impose limitations on the
11 person's participation, such as:

12 (i) limiting the number of witnesses the
13 person may call:

14 (ii) limiting the length of the testimony
15 of such witnesses;

16 (iii) limiting the person's
17 cross-examination of witnesses; or

18 (iv) otherwise limiting the participation
19 by the person in the litigation.

20 (D) Upon a showing by the defendant that
21 unrestricted participation during the course of the
22 litigation by the person initiating the action would
23 be for purposes of harassment or would cause the
24 defendant undue burden or unnecessary expense, the
25 court may limit the participation by the person in
26 the litigation.

27 (3) If the State elects not to proceed with the
28 action, the person who initiated the action shall have
29 the right to conduct the action. If the State so
30 requests, it shall be served with copies of all pleadings
31 filed in the action and shall be supplied with copies of
32 all deposition transcripts (at the State's expense).
33 When a person proceeds with the action, the court,
34 without limiting the status and rights of the person

1 initiating the action, may nevertheless permit the State
2 to intervene at a later date upon a showing of good
3 cause.

4 (4) Whether or not the State proceeds with the
5 action, upon a showing by the State that certain actions
6 of discovery by the person initiating the action would
7 interfere with the State's investigation or prosecution
8 of a criminal or civil matter arising out of the same
9 facts, the court may stay such discovery for a period of
10 not more than 60 days. Such a showing shall be conducted
11 in camera. The court may extend the 60-day period upon a
12 further showing in camera that the State has pursued the
13 criminal or civil investigation or proceedings with
14 reasonable diligence and any proposed discovery in the
15 civil action will interfere with the ongoing criminal or
16 civil investigation or proceedings.

17 (5) Notwithstanding subsection (b), the State may
18 elect to pursue its claim through any alternate remedy
19 available to the State, including any administrative
20 proceeding to determine a civil money penalty. If any
21 such alternate remedy is pursued in another proceeding,
22 the person initiating the action shall have the same
23 rights in such proceeding as such person would have had
24 if the action had continued under this Section. Any
25 finding of fact or conclusion of law made in such other
26 proceeding that has become final shall be conclusive on
27 all parties to an action under this Section. For
28 purposes of the preceding sentence, a finding or
29 conclusion is final if it has been finally determined on
30 appeal to the appropriate court, if all time for filing
31 such an appeal with respect to the finding or conclusion
32 has expired, or if the finding or conclusion is not
33 subject to judicial review.

34 (d) Award to Qui Tam plaintiff.

1 (1) If the State proceeds with an action brought by
2 a person under subsection (b), such person shall, subject
3 to the second sentence of this paragraph, receive at
4 least 15% but not more than 25% of the proceeds of the
5 action or settlement of the claim, depending upon the
6 extent to which the person substantially contributed to
7 the prosecution of the action. Where the action is one
8 which the court finds to be based primarily on
9 disclosures of specific information (other than
10 information provided by the person bringing the action)
11 relating to allegations or transactions in a criminal,
12 civil, or administrative hearing, in a legislative,
13 administrative, or Auditor General's report, hearing,
14 audit, or investigation, or from the news media, the
15 court may award such sums as it considers appropriate,
16 but in no case more than 10% of the proceeds, taking into
17 account the significance of the information and the role
18 of the person bringing the action in advancing the case
19 to litigation. Any payment to a person under the first or
20 second sentence of this paragraph (1) shall be made from
21 the proceeds. Any such person shall also receive an
22 amount for reasonable expenses which the court finds to
23 have been necessarily incurred, plus reasonable
24 attorneys' fees and costs. The State shall also receive
25 an amount for reasonable expenses which the court finds
26 to have been necessarily incurred by the Attorney
27 General, including reasonable attorneys' fees and costs,
28 and the amount received shall be deposited in the
29 Whistleblower Reward and Protection Fund created under
30 this Act. All such expenses, fees, and costs shall be
31 awarded against the defendant. When the system of State
32 colleges and universities, any school district, any
33 public community college district, any municipality, any
34 municipal corporation, any unit of local government, or

1 any combination of the above under an intergovernmental
2 agreement has been adversely affected by a defendant, the
3 court may award such sums as it considers appropriate to
4 the affected entity, specifying in its order the amount
5 to be awarded to the entity from the net proceeds that
6 are deposited in the Whistleblower Reward and Protection
7 Fund.

8 (2) If the State does not proceed with an action
9 under this Section, the person bringing the action or
10 settling the claim shall receive an amount which the
11 court decides is reasonable for collecting the civil
12 penalty and damages. The amount shall be not less than
13 25% and not more than 30% of the proceeds of the action
14 or settlement and shall be paid out of such proceeds.
15 Such person shall also receive an amount for reasonable
16 expenses which the court finds to have been necessarily
17 incurred, plus reasonable attorneys' fees and costs. All
18 such expenses, fees, and costs shall be awarded against
19 the defendant.

20 (3) Whether or not the State proceeds with the
21 action, if the court finds that the action was brought by
22 a person who planned and initiated the violation of
23 Section 3 upon which the action was brought, then the
24 court may, to the extent the court considers appropriate,
25 reduce the share of the proceeds of the action which the
26 person would otherwise receive under paragraph (1) or (2)
27 of this subsection (d), taking into account the role of
28 that person in advancing the case to litigation and any
29 relevant circumstances pertaining to the violation. If
30 the person bringing the action is convicted of criminal
31 conduct arising from his or her role in the violation of
32 Section 3, that person shall be dismissed from the civil
33 action and shall not receive any share of the proceeds of
34 the action. Such dismissal shall not prejudice the right

1 of the State to continue the action.

2 (4) If the State does not proceed with the action
3 and the person bringing the action conducts the action,
4 the court may award to the defendant its reasonable
5 attorneys' fees and expenses if the defendant prevails in
6 the action and the court finds that the claim of the
7 person bringing the action was clearly frivolous, clearly
8 vexatious, or brought primarily for purposes of
9 harassment.

10 (e) Certain actions barred.

11 (1) No court shall have jurisdiction over an action
12 brought by a former or present member of the Guard under
13 subsection (b) of this Section against a member of the
14 Guard arising out of such person's service in the Guard.

15 (2) (A) No court shall have jurisdiction over an
16 action brought under subsection (b) against a member
17 of the General Assembly, a member of the judiciary,
18 or an exempt official if the action is based on
19 evidence or information known to the State when the
20 action was brought.

21 (B) For purposes of this paragraph (2),
22 "exempt official" means any of the following
23 officials in State service: directors of departments
24 established under the Civil Administrative Code of
25 Illinois, the Adjutant General, the Assistant
26 Adjutant General, the Director of the State
27 Emergency Services and Disaster Agency, members of
28 the boards and commissions, and all other positions
29 appointed by the Governor by and with the consent of
30 the Senate.

31 (3) In no event may a person bring an action under
32 subsection (b) which is based upon allegations or
33 transactions which are the subject of a civil suit or an
34 administrative civil money penalty proceeding in which

1 the State is already a party.

2 (4) (A) No court shall have jurisdiction over an
3 action under this Section based upon the public
4 disclosure of allegations or transactions in a
5 criminal, civil, or administrative hearing, in a
6 legislative, administrative, or Auditor General's
7 report, hearing, audit, or investigation, or from
8 the news media, unless the action is brought by the
9 Attorney General or the person bringing the action
10 is an original source of the information.

11 (B) For purposes of this paragraph (4),
12 "original source" means an individual who has direct
13 and independent knowledge of the information on
14 which the allegations are based and has voluntarily
15 provided the information to the State before filing
16 an action under this Section which is based on the
17 information.

18 (f) State not liable for certain expenses. The State is
19 not liable for expenses which a person incurs in bringing an
20 action under this Section.

21 (g) Any employee who is discharged, demoted, suspended,
22 threatened, harassed, or in any other manner discriminated
23 against in the terms and conditions of employment by his or
24 her employer because of lawful acts done by the employee on
25 behalf of the employee or others in furtherance of an action
26 under this Section, including investigation for, initiation
27 of, testimony for, or assistance in an action filed or to be
28 filed under this Section, shall be entitled to all relief
29 necessary to make the employee whole. Such relief shall
30 include reinstatement with the seniority status such employee
31 would have had but for the discrimination, 2 times the amount
32 of back pay, interest on the back pay, and compensation for
33 any special damages sustained as a result of the
34 discrimination, including litigation costs and reasonable

1 attorneys' fees. An employee may bring an action in the
2 appropriate circuit court for the relief provided in this
3 subsection (g).

4 (h) Posting. The State must conspicuously display
5 notices of its employees' protections under this Act.

6 (Source: P.A. 89-260, eff. 1-1-96.)

7 (740 ILCS 175/8) (from Ch. 127, par. 4108)

8 Sec. 8. Funds; Grants.

9 (a) There is hereby created the Whistleblower Reward and
10 Protection Fund as a special fund in the State Treasury. All
11 proceeds of an action or settlement of a claim brought under
12 this Act shall be deposited in the Fund, except for proceeds,
13 expenses, attorneys' fees, and costs paid to a Qui Tam
14 plaintiff under subsection (d) of Section 4.

15 (b) Monies in the Fund shall be allocated, subject to
16 appropriation, as follows: One-sixth of the monies shall be
17 paid to the Attorney General and one-sixth of the monies
18 shall be paid to the Department of State Police for State law
19 enforcement purposes. The remaining two-thirds of the monies
20 in the Fund shall be used for payment of awards to the State
21 Qui---Tam---plaintiffs, for attorneys' fees and expenses
22 necessarily incurred by the Attorney General, and as
23 otherwise specified in this Act. The Attorney General shall
24 direct the State Treasurer to make disbursement of funds as
25 provided in court orders setting those awards, fees, and
26 expenses. The State Treasurer shall transfer any fund
27 balances in excess of those required for these purposes to
28 the General Revenue Fund.

29 (Source: P.A. 87-662.)